

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Fernstermaker, Michael and Fernstermaker, Diane (h/w)

DEFENDANTS

North American ATK Corporation 1102 West North Carrier Parkway, Suite 100 Grand Prairie, TX 15050 and LKQ Corporation 500 West Madison Street, Suite 2800 Chicago, IL 60661

County of Residence of First Listed Defendant Dallas County

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

James G. Lare, Esquire MDWCG 2000 Market Street, Suite 2300 Philadelphia, PA 19103 (215) 575-2717

(b) County of Residence of First Listed Plaintiff Berks County

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Peter M. Patton, Esquire Galfand Berger, LLP
1835 Market Street, Suite 2710
Philadelphia, PA 19103 (215) 665-1600**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
			SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1441 and 28 USC 1446Brief description of cause:
Product Liability action**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.DEMAND \$
750,000.00CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER 121201084

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 2249 Moselem Springs Road, Fleetwood, PA 19522

Address of Defendant: 1102 West N Carrier Parkway Suite 100 Grand Prairie, TX 75050

Place of Accident, Incident or Transaction: Kutztown, PA
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities? Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify) _____

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☒ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, James G. Lane, counsel of record do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
☐ Relief other than monetary damages is sought.

DATE: _____

James G. Lane
Attorney-at-Law

201381
Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: _____

James G. Lane
Attorney-at-Law

201381
Attorney I.D.#

ADDRESS OF ADDITIONAL DEFENDANT

LKQ CORPORATION
500 WEST MADISON STREET, SUITE 2800
CHICAGO, IL 60661

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

FENSTERMAKER, MICHAEL and : **CIVIL ACTION**
FENSTERMAKER, DIANE (h/w) :
v. :
NORTH AMERICAN ATK CORP. and :
LKQ CORP. : **NO.**

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus-Cases brought under 28 U.S.C. §2241 through §2255. ()
- (b) Social Security-Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration-Cases require to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos-Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management-Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management--Cases that do not fall into any one of the other tracks. (x)

January 14, 2012
Date

James G. Lare
Attorney-at-law

Defendant
Attorney for

215-575-2717
Telephone

215-575-0856
FAX Number

jglare@mdwecg.com
E-Mail Address

Civil Justice Expense and Delay Reduction Plan
Section 1:03 - Assignment to a Management Track

(a) The clerk of court will assign cases to tracks (a) through (d) based on the initial pleading.

(b) In all cases not appropriate for assignment by the clerk of court to tracks (a) through (d), the plaintiff shall submit to the clerk of court and serve with the complaint on all defendants a case management track designation form specifying that the plaintiff believes the case requires Standard Management of Special Management. In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

(c) The court may, on its own initiative or upon the request of any party, change the track assignment of any case at any time.

(d) Nothing in this Plan is intended to abrogate or limit a judicial officer's authority in any case pending before that judicial officer, to direct pretrial and trial proceedings that are more stringent than those of the Plan and that are designed to accomplish cost and delay reduction.

(e) Nothing in this Plan is intended to supersede Local Civil Rules 3 or 7, or the procedure for random assignment of Habeas Corpus and Social Security cases referred to magistrate judges of the court.

SPECIAL MANAGEMENT CASE ASSIGNMENTS
(See § 1.02(e) Management Track Definitions of the
Civil Justice Expense and Delay Reduction Plan)

Special management cases will usually include that class of cases commonly referred to as "complex litigation" as that term has been used in the Manuals for Complex Litigation. The first manual was prepared in 1969 and the Manual for Complex Litigation Second, MCL 2d was prepared in 1985. This term is intended to include cases that present unusual problems and require extraordinary treatment. See §0.1 of the first manual. Cases may require special or intense management by the court due to one or more of the following factors: (1) large number of parties; (2) large number of claims or defenses; (3) complex factual issues; (4) large volume of evidence; (5) problems locating or preserving evidence; (6) extensive discovery; (7) exceptionally long time needed to prepare for disposition; (8) decision needed within an exceptionally short time; and (9) need to decide preliminary issues before final disposition. It may include two or more related cases. Complex litigation typically includes such as antitrust cases; cases involving a large number of parties or an unincorporated association of large membership; cases involving requests for injunctive relief affecting the operation of large business entities; patent cases; copyright and trademark cases; common disaster cases such as those arising from aircraft crashes or marine disasters; actions brought by individual stockholders; stockholder's derivative and stockholder's representative actions; class actions of potential class actions; and other civil (and criminal) cases involving unusual multiplicity or complexity of factual issues. See §0.22 of the first Manual for Complex Litigation and Manual for Complex Litigation Second, Chapter 33.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL FENSTERMAKER and
DIANE FENSTERMAKER (h/w)

Plaintiffs

V.

NORTH AMERICAN ATK CORPORATION, and)
LKQ CORPORATION)

Defendants

Case No. _____ -cv- _____

NOTICE OF REMOVAL

Defendants, North American ATK Corporation and LKQ Corporation, hereby remove this civil action to the United States District Court for the Eastern District of Pennsylvania pursuant to 28 U.S.C. §§ 1441 and 1446 and, in support thereof, set forth a short, plain statement of the grounds for removal:

A. Procedural History

1. Plaintiffs, Michael Fenstermaker and Diane Fenstermaker, commenced this action against Defendants on December 10, 2012 by filing a Complaint in the Philadelphia Court of Common Pleas. (*See* Ex. A: Compl.¹)

2. The Complaint was served upon North American ATK Corporation via certified mail on December 17, 2012, and LKQ Corporation was served on December 18, 2012 via regular mail.

1 The copy of the Complaint attached as Exhibit A constitutes all process and pleadings served upon the
Defendants. 28 U.S.C. § 1446(a).

B. Relevant Background

3. According to the Complaint, Plaintiffs are citizens of the Commonwealth of Pennsylvania, “living at 2249 Moselem Springs Road, Fleetwood, Pennsylvania 19522.”

(Compl. ¶ 1.)

4. Defendant North American ATK Corporation is an entity organized and existing under the laws of the State of California, with a principal place of business in the State of Texas.

5. Defendant LKQ Corporation is an entity organized and existing under the laws of the State of Delaware and has its principal place of business in the State of Illinois.

6. Accordingly, there is complete diversity of citizenship among the parties to this lawsuit.

7. Plaintiff, Michael Fenstermaker, allegedly incurred “severe disabling injuries” by lifting a box containing automotive cylinder heads, and his wife, Diane Fenstermaker, alleges loss of consortium as a result of her husband’s injuries.

8. Michael Fenstermaker’s product liability causes of action against the Defendants contain *ad damnum* clauses in which damages in excess of \$50,000.00 are demanded.

9. Likewise, Diane Fenstermaker’s loss of consortium claim, set forth in Count IV, also demands damages in excess of \$50,000.00.

10. Thus, the Plaintiffs in this case are demanding significant damages, not only as a result of Michael Fenstermaker’s severe and disabling injuries, but also from his wife’s loss of consortium.

C. Removal Based on Diversity of Citizenship

11. “[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to

the district court of the United States for the district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a).

12. Under 28 U.S.C. § 1332, "The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum of value of \$75,000, exclusive of interest and costs, and is between—(1) citizens of different states." 28 U.S.C. § 1332(a)(1).

13. For purposes of Sections 1332 and 1441, "a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business" *Id.* § 1332(c)(1).

14. In this case, the parties are citizens of different states: the Plaintiffs are Pennsylvania citizens, and the Defendants are citizens of California, Texas, Delaware, and Illinois.

15. North American ATK Corporation is considered a citizen of both California and Texas, and LKQ Corporation is regarded as having citizenship in Delaware and Illinois.

16. Additionally, the amount in controversy exceeds the sum or value of \$75,000 because the Plaintiffs' *ad damnum* clauses request damages in excess of \$50,000 and Mr. Fenstermaker's severe and disabling injuries, some of which are alleged to be permanent in nature.

17. Even though Plaintiffs' Complaint does not specify a specific sum for damages, removal is, nevertheless proper based upon the nature of the alleged injuries and the demand for damages in excess of \$50,000. 28 U.S.C. § 1446(c)(2)(A)(ii).

18. The removal statute permits removal when "the initial pleading seeks . . . a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded." *Id.*

19. Finally and to the extent necessary, each Defendant joins in the removal of this action.

20. In closing, removal is proper in this case because the parties are of diverse citizenship and the amount in controversy exceeds the jurisdictional threshold.

WHEREFORE, Defendants, North American ATK Corporation and LKQ Corporation, remove this matter from the Court of Common Pleas of Philadelphia County, Pennsylvania to the United States District Court for the Eastern District of Pennsylvania and shall, promptly after the filing of this Notice of Removal, give written notice to all adverse parties and file a copy of said Notice with the State court.

Respectfully submitted,

Date: January 14, 2013

By: (jgl7049)
James G. Lare (201381)
MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN
2000 Market Street, Suite 2300
Philadelphia, PA 19103
(215) 575-2717 (telephone)
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Attorney for Defendants,
North American ATK Corporation and
LKQ Corporation

James G. Lare, Esquire
Attorney ID No. 201381
MARSHALL, DENNEHEY, WARNER,
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1845 Walnut Street, 18th Floor
Philadelphia, PA 19103-4797
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jglare@mdwecg.com

Attorneys for Defendants,
North American ATK Corporation and
LKQ Corporation

MICHAEL FENSTERMAKER and
DIANE FENSTERMAKER (h/w)

Plaintiffs

v.

NORTH AMERICAN ATK CORPORATION, and
LKQ CORPORATION

Defendants

:
: COURT OF COMMON PLEAS
: PHILADELPHIA COUNTY
:
: DECEMBER TERM, 2012
:
: NO. 01084
:
:
:

NOTICE TO THE PROTHONOTARY OF PHILADELPHIA COUNTY, PENNSYLVANIA

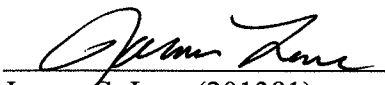
TO: THE PROTHONOTARY OF THE COURT OF
COMMON PLEAS OF PHILADELPHIA COUNTY

Pursuant to 28 U.S.C. § 1446(a), Defendant, North American ATK Corporation and LKQ Corporation, files herewith a copy of the Notice of Removal filed in the United States District Court for the Eastern District of Pennsylvania on this date.

Respectfully submitted,

Date: January 14, 2013

By:


James G. Lare (201381)
MARSHALL DENNEHEY WARNER
COLEMAN & GOGGIN
2000 Market Street, Suite 2300
Philadelphia, PA 19103

(215) 575-2717 (telephone)
(215) 575-0856 (facsimile)
jglare@mdwgc.com

Attorney for Defendants,
North American ATK Corporation and
LKQ Corporation

CERTIFICATE OF SERVICE

I, James G. Lare, hereby certify that I served a copy of the foregoing *Notice of Removal* upon the following attorney in the manner set forth below:

Peter M. Patton, Esquire
Galfand Berger, LLP
1835 Market Street, Suite 2710
Philadelphia, PA 19103
(Attorney for Plaintiffs)
via facsimile and regular mail.

Date: January 14, 2013

(jgl7049)
James G. Lare

EXHIBIT A

Court of Common Pleas of Philadelphia County
Trial Division**Civil Cover Sheet**

		For Prothonotary Use Only (Docket Number)	
PLAINTIFF'S NAME MICHAEL FENSTERMAKER		DECEMBER 2012 E-Filing Number: 1212013509 001084	
PLAINTIFF'S ADDRESS 2249 MOSELEM SPRINGS ROAD FLEETWOOD PA 19522		DEFENDANT'S NAME NORTH AMERICAN ATK CORPORATION	
PLAINTIFF'S NAME DIANE FENSTERMAKER		DEFENDANT'S ADDRESS 1102 WEST N CARRIER PARKWAY SUITE 100 GRAND PRARIE TX 75050	
PLAINTIFF'S ADDRESS 2249 MOSELEM SPRINGS ROAD FLEETWOOD PA 19522		DEFENDANT'S NAME LKQ CORPORATION	
PLAINTIFF'S NAME		DEFENDANT'S ADDRESS 500 WEST MADISON STREET SUITE 2800 CHICAGO IL 60661	
PLAINTIFF'S ADDRESS		DEFENDANT'S NAME	
TOTAL NUMBER OF PLAINTIFFS 2		TOTAL NUMBER OF DEFENDANTS 2	
COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer From Other Jurisdictions			
AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00		COURT PROGRAMS <input type="checkbox"/> Arbitration <input type="checkbox"/> Mass Tort <input checked="" type="checkbox"/> Jury <input type="checkbox"/> Savings Action <input type="checkbox"/> Non-Jury <input type="checkbox"/> Petition <input type="checkbox"/> Other:	
CASE TYPE AND CODE 2P - PRODUCT LIABILITY			
STATUTORY BASIS FOR CAUSE OF ACTION			
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)		IS CASE SUBJECT TO COORDINATION ORDER? YES NO	
		FILED PROPROTHY DEC 10 2012 S. GARRETT	
TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: <u>MICHAEL FENSTERMAKER , DIANE FENSTERMAKER</u> Papers may be served at the address set forth below.			
NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY PETER PATTON		ADDRESS 1835 MARKET ST. SUITE 2710 PHILADELPHIA PA 19103	
PHONE NUMBER (215) 665-1600	FAX NUMBER (215) 564-2262		
SUPREME COURT IDENTIFICATION NO. 48847		E-MAIL ADDRESS ppatton@galfandberger.com	
SIGNATURE OF FILING ATTORNEY OR PARTY PETER PATTON		DATE SUBMITTED Monday, December 10, 2012, 01:37 pm	

GALFAND BERGER, L.L.P.
BY: PETER M. PATTON, ESQUIRE
I.D. # 48847
1835 Market Street, Suite 2710
Philadelphia, Pennsylvania 19103
(215) 665-1600

MICHAEL FENSTERMAKER and DIANE
FENSTERMAKER, h/w
2249 Moselem Springs Road
Fleetwood, Pennsylvania 19522

-vs-

NORTH AMERICAN ATK CORPORATION
1102 West North Carrier Parkway, Suite 100
Grand Prairie, Texas 75050

-and-

LKQ CORPORATION
500 West Madison Street
Suite 2800
Chicago, Illinois 60661

COMPLAINT - CIVIL ACTION

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

AVISO

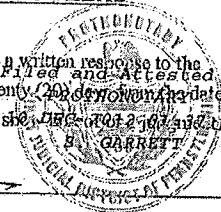
Le han demandado en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo de la demanda y notificacion para asentar una comparecencia escrita en persona o por su abogado y archivar con la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte puede continuar la demanda en contra suya y puede entrar una decision contra usted sin aviso o notificacion adicional por la cantidad de dinero de la demanda o por cualquier reclamacion hecha por el demandante. Usted puede perder dinero o propiedad u otros derechos importantes para usted.

NOTICE TO PLEAD

TO: All Defendants

You are hereby notified to file a written response to the enclosed Complaint within twenty (20) days of the date of service of this Complaint. If you fail to do so, a judgment may be entered against you.

Attorney for Plaintiffs



**THIS IS NOT AN ARBITRATION CASE
AN ASSESSMENT OF DAMAGES HEARING
IS REQUIRED**

Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

TRIAL DIVISION

TERM, 2012

NO.

JURY TRIAL DEMANDED

USTED DEBE DE LLEVAR ESTA DEMANDA A UN ABOGADO IMMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE PARA PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITO ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Lawyer Referral Information Services, One Reading Center, Philadelphia, Pennsylvania 19107 (215) 238-1701

COMPLAINT- CIVIL ACTION

1. Plaintiffs, MICHAEL FENSTERMAKER and DIANE FENSTERMAKER are husband and wife and are adults living at 2249 Moselem Springs Road, Fleetwood, Pennsylvania 19522.
2. Defendant, NORTH AMERICAN ATK CORPORATION ("ATK") is a corporation that regularly does business in Philadelphia County, Pennsylvania with a place of business located at 1102 West North Carrier Parkway, Suite 100, Grand Prairie, Texas 75050.
3. Defendant LKQ Corporation ("LKQ") is a business with a place of business located at 500 West Madison Street, Suite 2800, Chicago, Illinois 60661 and regularly does business in Philadelphia County.
4. All events herein occurred on or about April 20, 2011.
5. At a date prior to April 20, 2011, Defendants ATK and LKQ were each in the business of designing, manufacturing, selling, packaging, shipping and distributing motor vehicle parts and designed, manufactured, marketed, advertised, sold, packaged, shipped and introduced into the stream of commerce certain V48880 cylinder head(s) packaged in a box to enable users to handle, transport, move and deliver said product ("subject cylinder head(s) in box").
6. At some time prior to April 20, 2011, Defendants ATK and LKQ designed, manufactured, sold and supplied the subject cylinder head(s) in box to Plaintiff's employer, Advance Auto Parts, 9755 Commerce Circle, Kutztown, Pennsylvania 19522.
7. At a time prior to April 20, 2011, Defendants designed, manufactured, packaged, sold and shipped said cylinder head(s) in box with the expectation that users would have to transport, move and handle said cylinder head(s) in a box.
8. On April 20, 2011, Plaintiff Michael Fenstermaker was employed by Advance Auto Parts as a warehouse worker, a job in which he lifted and handled boxes.
9. On April 20, 2011, Plaintiff, during the course and scope of his employment with Advance Auto Parts, was handling subject cylinder head(s) in box when due to the negligence and wrong doing of Defendant(s) and the defective and unsafe design and condition of the subject cylinder head(s) in box, Plaintiff was severely injured while lifting the subject cylinder head(s) in box, causing him to suffer severe injuries, the full extent of which is described more fully below.
10. After the incident, the subject cylinder head(s) in box was found to be grossly overweight and hazardous, weighing some 147 pounds.
11. At all times material hereto, the subject cylinder head(s) in box, as designed, manufactured, sold, supplied by Defendant(s) was being used in the manner for which it was designed, manufactured, sold, and supplied.

12. At all times mentioned herein, Plaintiff Michael Fenstermaker was acting with due care.

13. All of the acts done or not done, by Defendants were done or not done by said Defendants, their agents, servants, workers, and/or employees, acting in the course and scope of their employment with and on behalf of said Defendants.

14. As a direct and proximate result of the carelessness and wrongdoing of Defendants and the unreasonably dangerous and defective condition of the said cylinder head(s) in box, as set forth herein, Plaintiff Michael Fenstermaker suffered severe disabling injuries to his skin, bones, muscles, flesh, nerves, tendons and other tissues, including, but not limited to bulging disc at L2-3; disc injury at L3-4; disc injury at L4-5; disc herniation at L5-S1, thereby causing him to undergo extensive medical care and treatment and great physical pain, some or all of which are permanent in nature.

15. As a direct and proximate result of the carelessness, negligence and wrongdoing of Defendants and the defective condition of the said cylinder head(s) in box, as set forth herein, Plaintiff Michael Fenstermaker has in the past and will in the future continue to suffer from the above conditions as well as scarring, deformity, pain, humiliation, embarrassment, disfigurement, loss of well being, severe restrictions on his ability to engage in normal activities and inability to pursue and enjoy the normal ordinary features of life.

16. As a direct and proximate result of the carelessness, negligence and wrongdoing of the Defendants and the defective condition of the said cylinder head(s) in box, as set forth herein, Plaintiff Michael Fenstermaker has required and will in the future continue to require medical care, rehabilitative care, and other medical care and treatment and has incurred and will incur substantial expenses for such care and treatment.

17. As a direct and proximate result of the carelessness, negligence and wrongdoing of the Defendants and the defective condition of the said cylinder head(s) in box, as set forth herein, Plaintiff Michael Fenstermaker has been in the past, and will be in the future, prevented from performing his usual duties, avocations and occupations and has suffered a loss of earnings and earning capacity.

COUNT I

MICHAEL FENSTERMAKER vs.

NORTH AMERICAN ATK CORPORATION AND LKQ CORPORATION

18. Plaintiff incorporates Paragraphs 1 through 17 as though fully set forth at length herein.

19. At all times hereto, Defendants, having undertaken to design and manufacture and sell the said cylinder head(s) in box, knew or through the exercise of reasonable care, should have known that said cylinder head(s) in box was unsafe for its intended or reasonably

foreseeable uses and that such defect(s) would subject users to serious injuries in the said cylinder head(s) in box's intended and reasonably foreseeable uses.

20. The aforesaid injuries to Plaintiff Michael Fenstermaker were directly caused by Defendants' negligence and disregard for the safety of others, both generally and in the following particular respects:

- a. Failure to design, manufacture, sell, package and ship the aforementioned cylinder head(s) in box with due care;
- b. Failure to incorporate on the aforementioned cylinder head(s) in box proper and adequate safety features for the product's foreseeable, intended and anticipated uses, one of which included handling;
- c. Failure to provide proper and adequate handling devices in the box that was part and parcel of the cylinder head(s) in box as manufactured, shipped, distributed and sold so as to create no unnecessary risk of injury to intended handlers, movers and users of said cylinder head(s) in box;
- d. Failure to properly and adequately test and inspect the aforementioned cylinder head(s) in box to determine whether it could be used, handled, transported, moved and carried without causing injuries to its users, handlers and transporters;
- e. Failure to warn or adequately warn of the dangers in the use, handling, movement, carrying and transporting of the aforementioned cylinder head(s) in box;
- f. Failure to minimize to the fullest extent possible the foreseeable hazards, dangers and risks of injury associated with the cylinder head(s) in box in its foreseeable and intended uses, one of which included handling, carrying and moving the subject cylinder head(s) in box;
- g. Failure to provide every element necessary to make the subject cylinder head(s) in box safe for its reasonable and foreseeable and intended uses, which included transporting, carrying and moving said cylinder head(s) in box;
- h. Failure to properly equip the subject cylinder head(s) in box with appropriate safety devices and equipment that would enable the cylinder head(s) in box to be handled, carried, moved and maneuvered so as not to create an unnecessary danger or risk of injury;
- i. Failure to provide proper and adequate instructions, directions and warnings regarding the handling, movement, maneuvering and transporting of the aforementioned cylinder head(s) in box;
- j. Failure to provide sufficient and adequate straps and/or handles and/or safety devices on the cylinder head(s) in box; and

- k. Grossly overloading the box in which the subject cylinder head(s) were boxed;
- l. Supplying a product without needed warnings of the hazard(s);
- m. Supplying a product with inadequate warnings of the hazard(s);
- n. Supplying the subject cylinder head(s) in box in such a way as to violate Restatement (Second) of Torts Section 388;
- d. Manufacturing and packaging the cylinder head(s) in box with inadequate quality control(s); and
- p. Failing to properly and adequately test and/or inspect the product; and
- q. Being negligent at law.

WHEREFORE, Plaintiff demands judgment against Defendants NORTH AMERICAN ATK CORPORATION and LKQ CORPORATION, together with interest, costs and other such relief as this Court deems just.

COUNT II
MICHAEL FENSTERMAKER vs.
NORTH AMERICAN ATK CORPORATION AND LKQ CORPORATION
PRODUCTS LIABILITY

21. Plaintiff incorporates by reference all allegations in Paragraph 1 through 20 of this Complaint, as fully set forth herein.

22. At all material times hereto, Defendants were engaged in the business of designing, manufacturing, assembling, marketing, promoting and selling, and/or otherwise introducing into the stream of commerce cylinder head(s) in box including the cylinder head(s) in box involved in the aforesaid incident.

23. At all materials times hereto, there had been no substantial changes in the condition of the cylinder head(s) in box, from the time the cylinder head(s) in box was sold to the time of the incident.

24. Defendants supplied cylinder head(s) in box in a defective and/or unreasonably dangerous condition in light of the defect, set forth above, in that the cylinder head(s) in box had elements which made it unsafe for use and was without elements required to make it safe for use, for which the Defendants are strictly liable.

25. The defective condition of the subject cylinder head(s) in box directly caused Plaintiff's injuries.

WHEREFORE, Plaintiff Michael Fenstermacher claims of Defendants NORTH AMERICAN ATK CORPORATION and LKQ CORPORATION a sum in excess of Fifty Thousand (\$50,000.00) Dollars, together with lawful interest and costs.

COUNT III
MICHAEL FENSTERMAKER vs.
NORTH AMERICAN ATK CORPORATION AND LKQ CORPORATION
BREACH OF WARRANTIES

26. Plaintiffs incorporate paragraphs 1 through 25 as though they were set forth at length herein.

27. In designing, manufacturing, assembling, marketing, promoting, selling and/or otherwise introducing into the stream of commerce the cylinder head(s) in box, Defendants expressly and/or impliedly warranted that the cylinder head(s) in box was merchantable, fit and safe for the ordinary and particular purposes for which it was supplied, and that it was free from defects.

28. Defendants, and each of them, breached their express and implied warranties in that the cylinder head(s) in box was not merchantable, was not fit and safe for the ordinary and particular purposes for which it was supplied, and was defective, and these breaches directly caused Plaintiff's injuries.

29. The express warranties of Defendants, are not accessible to Plaintiff, in that Defendants sold the cylinder head(s) in box not to Plaintiff-Husband but to his employer.

30. Based on information and belief, the express warranties of Defendants were, in substance, that the cylinder head(s) in box was safe for its reasonably foreseeable uses.

WHEREFORE, Plaintiff Michael Fenstermacher claims of Defendants, NORTH AMERICAN ATK CORPORATION and LKQ CORPORATION a sum in excess of Fifty Thousand (\$50,000.00) Dollars, together with lawful interest and costs.

COUNT IV
DIANE FENSTERMAKER vs.
NORTH AMERICAN ATK CORPORATION AND LKQ CORPORATION
LOSS OF CONSORTIUM

31. Plaintiff incorporates by reference Paragraphs 1 through 30 as though the same were set forth fully at length herein.

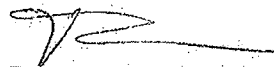
32. As a direct and proximate result of the aforesaid negligence of Defendants, Plaintiff, Diane Fenstermaker sustained the following injuries and damages:

a. Loss of services, society and conjugal fellowship of Plaintiff-Husband, Michael Fenstermaker.

WHEREFORE, Diane Fenstermaker demands judgment against any and all Defendants together with lawful interest and costs of suit.

GALFAND BERGER, LLP

BY:

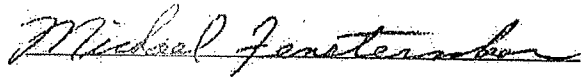


PETER M. PATTON, ESQUIRE
Attorney for Plaintiffs

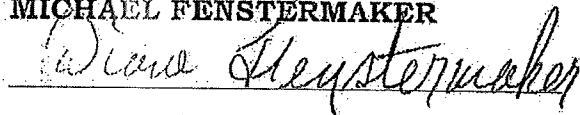
Dated: 2012-12-10

VERIFICATION

The undersigned, having read the attached pleading, verifies that the within pleading is based on information furnished to counsel, which information has been gathered by counsel in the course of this lawsuit. The language of the pleading is that of counsel and not of the signer. Signer verifies that he has read the within pleading and that it is true and correct to the best of signer's knowledge, information and belief. To the extent that the contents of the pleading are that of counsel, verifier has relied upon counsel in taking this verification. This verification is made subject to the penalties of 18 Pa.R.C.P. Section 4904 related to unsworn falsification to authorities.



MICHAEL FENSTERMAKER



DIANE FENSTERMAKER